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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,637	06/30/2003	Kestutis Paticijunas	MFCP.102769	8490
45809 7590 09/09/2008 SHOOK, HARDY & BACON L.L.P. (c/o MICROSOFT CORPORATION) INTELLECTUAL PROPERTY DEPARTMENT 2555 GRAND BOULEVARD KANSAS CITY, MO 64108-2613				
EXAMINER				
AVELLINO, JOSEPH E				
ART UNIT		PAPER NUMBER		
2146				
MAIL DATE		DELIVERY MODE		
09/09/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/608,637

**Applicant(s)**

PATIEJUNAS, KESTUTIS

**Examiner**

Joseph E. Avellino

**Art Unit**

2146

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 20 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: arguments presented are not persuasive (see continuation sheet).  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Joseph E. Avellino/  
Primary Examiner, Art Unit 2146

Applicant's arguments dated 8/20/08 have been fully considered but are not persuasive.

Applicant argues, in substance, that the Examiner is required to provide evidence to support the Examiner's assertion of Official Notice. Applicant is incorrect. As stated in the Final Office Action, the Examiner has followed the steps as required in MPEP 2144.03 and therefore Applicant's lack of traversal in the subsequent action is considered admitted prior art. Applicant further provides case law stating that the Office is required to point to concrete evidence to support the Office's Findings (i.e. in re Zurko), however this case law is dealing with inherency or obvious arguments with no official statement of Official Notice done by the BPAI, not by an Examiner who has fulfilled the requirements of the MPEP for Official Notice. This case law has no bearing on this matter, and is irrelevant. Even though the MPEP does not have the force of law, Applicant is not permitted to pick certain sections of the MPEP to ignore. The MPEP is clear that a lack of traversal is construed as an admission of prior art. By this rationale, the rejection is maintained.

Applicant argues, in substance, that Lockridge does not disclose payment for content over a first network, but not a second network, rather if a user has a subscription, the user is not charged another recording fee. The Examiner disagrees. Applicant should understand that in order for the user to view the content, the content must be transmitted from the mini-headend unit 12 to the STB 44 (¶ 28). If the user does not have a subscription fee, then the user is charged the fee in order to record the movie from the satellite network (i.e. the first network). The user is not charged for transfer over the second network (i.e. from the headend unit to the STB 44, since the user is able to transfer the content from the hard drive 32 to the STB without incurring another recording cost. To one of ordinary skill in the art, this would read upon the limitation. By this rationale, the rejection is maintained.

Applicant argues, in substance, that numerous other limitations are not disclosed by the combination of references. The Examiner disagrees. The Examiner has clearly shown that each and every limitation has been met by the prior art, and therefore the rejections are maintained.